

**CITY OF ROCKVILLE PLANNING DIVISION  
STAFF REPORT**

July 2, 2009

**SUBJECT: Text Amendment TXT2009-00221**  
Corrections and Clarifications to the  
Comprehensive Revision of the  
City Zoning Ordinance, adopted  
December 15, 2008

**Applicant:** Mayor and Council of Rockville

**BACKGROUND**

On December 15, 2008 the Mayor and Council adopted a comprehensive revision to the City's Zoning Ordinance, being Chapter 25 of the City Code. This action followed several years of work by the City staff, Planning Commission, and Mayor and Council to develop these revisions. In reviewing the text as adopted, staff has noted several additions and corrections that need to be made to the adopted text. These are essentially technical in nature, involving mostly typographic errors. The City Attorney advises that these types of corrections can only be made via a formal text amendment. Other modifications for purposes of formatting and preparation for final publication, do not need text amendment approval since the language itself is not changing.

**ANALYSIS**

Within the text amendment are a number of changes involving the usage of the percent (%) sign. By convention, the symbol should not be used in the body of the text; the word "percent" should be spelled out. There are a number of these changes shown in the body of the proposed amendment. These changes are not specifically identified below.

Also, when the final version of the revised Zoning Ordinance text is adopted, the locations where the term [effective date] appears will have the March 16, 2009 date inserted.

Finally, language has been added into the Zoning Ordinance that currently appears in Chapter 5, the Building Code. These provisions regarding building restriction lines appear to be out of place in Chapter 5, since they essentially regulate the placement of buildings and signs within these areas. The new language appears in Article 17.

The following is a summary of the recommended changes to the text:

In the Table of Contents, the reference to the Landscaping, Lighting and Screening Manual has been deleted. This document was included with the various drafts of the proposed Zoning Ordinance for convenience sake, but it is now a separate document approved by resolution, and is not a part of the Zoning Ordinance itself.

Section 25.01.04 – A new subsection b has been added at the recommendation of the Legal department that allows for some flexibility in approving projects where time or circumstances have overtaken the requirement for consistency with the master plan.

Section 25.01.06 – Typo

Section 25.01.09 – Subsection (c) is amended to add the word implementation. For multi-phase projects, there may be instances where the implementation period for the phases may be different than the overall validity period, so both terms should be included in this subsection.

Section 25.03.02 – Within the Definitions, several corrections need to be made:

Alteration, Structural – Subsection 5 has been deleted in order to be consistent with the intent of the language in Article 8 for development standards nonconformities. Exterior alterations, such as applying a new façade to a building are not normally structural in nature and should not be included within this definition.

Boardinghouse – This use is not permitted anywhere in the code. However, for enforcement purposes the definition has been retained and language added to clarify that such uses are violations subject to the requirements of Article 19.

Dwelling, Multiple-Unit – The parenthetical term Apartment Building is recommended for deletion since it could be construed as being in conflict with the term as used in Chapter 18 of the City Code regarding Rental Facilities and Landlord-Tenant Relations.

Easement – the term “property” is recommended to be replaced by the word “land” at the recommendation of the City Attorney.

Environmental Guidelines – The date of July 1999 is replaced by the resolution number for greater clarity.

Flea Market – Typo

Floodplain - Typo

Law – Typo

Lot, interior – Revise to clarify that the definition excludes corner lots and through lots.

Lot Coverage – deleted reference to accessory structures. This is a hold-over from proposals to regulate impervious surfaces over all of the residential lots.

With the change to only controlling imperviousness in the front yard, this definition needs to reflect current practice.

Person – Minor edit

Shooting Gallery or Range – This definition is proposed to delete the reference to a range. Staff does believe it is appropriate to consider an outdoor shooting range within the City limits. The definition also makes is clear that a shooting gallery must be indoors. As part of this recommended change, wherever this term appears in the use tables under Assembly and Entertainment, the reference to range is deleted.

Swimming Pool – Change made to specifically include the Planned Development zones within the regulation involving multi-unit and attached dwellings.

Section 25.03.03.a – Under the Rules of Measurement, a sentence has been added to clarify that in the case of parking space calculations, a fraction of a space is to be rounded up to the next higher number.

Section 25.04.03. – Correct typos in subsections b and new f. There is no subsection d in the adopted text, so the balance of this section is revised with the correct subsection designations, as follows:

[e] d. *Meetings and Hearings*

1. Meetings must be held when necessary to conduct business or at intervals as may be mandated by State law, this Chapter, or the adopted Rules of Procedure of the Board.
2. Hearings must be held when required by State law or other provision of this Chapter.
3. The Board must hold a hearing on an appeal from the decision of the Sign Review Board no later than 45 days from the date of the filing of the appeal, provided that a different date may be set with the consent of the party filing the appeal.

[f] e. *Decision on Appeal from Sign Review Board* – The Board shall render its decision on an appeal from the Sign Review Board within ten (10) business days following the completion of the hearing, provided that the time for rendering a decision may be extended with the consent of the party filing appeal.

[g] f. *Appeals* – Any person aggrieved by any final decision of the Board, including the failure of the Board to conduct a hearing or render a written decision within the time frames set forth in [Sections] subsections 25.04.03.[e] d.3 and [f] e of this Section, may appeal the same to the Circuit Court for the County. Such appeal

must be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

Section 25.04.04 – Subsection (e) is redundant to the provisions set forth in subsection 1, which reads:

*Generally* – The Historic District Commission has all those powers and duties conferred and imposed upon it by this Chapter and the provisions of State law, including but not limited to:

The reference to State law in the introductory section makes the reference to Article 66B in subsection (e) unnecessary.

Section 25.04.05 – Subsection c.5 has been modified to have the Chief of Planning be the Clerk to the Sign Review Board. This reflects a recent internal reorganization that moves sign regulation from Inspection Services to Planning.

Section 25.04.06 – Chief of Planning – Text changes have been made to reflect the sign regulation duties transferred from ISD, as noted above.

Section 25.05.07 – Chief of Inspection Services – Deleted references to sign review and enforcement.

Section 25.05.03. –

Subsection c.1(b) is amended to make reference to the meeting notice procedures set forth in Article 7; a new subsection c.1(c) is added to make general reference to any other required public meetings or hearings held by any Approving Authority.

Under subsection c.2(a), the word “mailing” is replaced with written notification since notice may be made in a number of ways. In subsection c.2(b), a clarification is added to specifically require that notice be provided to the resident of the property. This is to address the issue of absentee ownership, where the owner address is different than the property address. There is a typo correction in subsection c.3.

Subsection d, relating to the notification signs that must be posted, has been modified to reflect actual procedures. The signs will not be issued until the application has been reviewed and deemed complete, and will be made available within five days following acceptance of the application. Also, staff recommends that the distance between signs be increased from 250 feet to 750 feet.

Subsection 5 – Typo

Section 25.05.05 – The phrase if available is added, since there will be instances when electronic versions will not be available.

Section 25.05.07 - Amendments to Approved Development

Subsection a has been modified to delete reference to the Chief of Inspection Services for signs, since that function will belong to the Chief of Planning.

Subsection b.1 has been modified to clarify that minor amendments will be subject to the provisions for a Level 1 site plan review, and reference to the Chief of Inspection Services for signs has been deleted.

Subsection b.2(c) has been revised to clarify that maintenance of landscaping does not require a formal amendment procedure. There are also some corrections for minor punctuation errors. This text change will also require an amendment to the Landscaping, Screening and Lighting Manual, as discussed at the end of this report.

A new subsection b.3 has been added to cover cases where there may be modifications that reduce the density or development intensity on a site. In these cases, the original Approving Authority will act on the modification.

Subsection b.4 has been revised to not require pre-application notice or meetings for minor amendments. Given the limited scope of such changes, staff does not believe that the full site plan review requirements are necessary in these cases where the overall character of the project will not change.

Subsection c.2 has been amended to provide that major amendments to an approved development will be processed as either a Level 1 or Level 2 site plan, depending on which Approving Authority approved the original application. If the Chief of Planning approved the original project, the modification would be at a Level 1. If the Planning Commission was the Approving Authority, then it would be a Level 2 review.

Section 25.05.08 – Typos

Section 25.06.01 – The provisions for written notice in subsection e.4 have been modified to make it clear that all property owners subject to a map amendment must receive notice. Any homeowner's associations within the 750 feet of the affected properties must also receive notice.

Section 25.06.02 – Subsection b.3 has been added to reflect current practice that the Mayor and Council must review proposed text amendments prior to accepting them for processing. Subsection d.1 has been modified to further reflect the administration of the proposed text amendments.

Section 25.06.05 – Inserted a new a notice requirement in subsection c for adjoining and confronting property owners. For these minor adjustments, staff does not believe that notice with 500 feet of the site is necessary. Subsection e.4 has been deleted since there does not seem to be any need to provide notice of a decision in these cases.

Section 25.07.01 – A clarification has been added in subsection a.1(d) to make it clear that only structural alterations that affect the height, floor area, or other exterior changes are subject to site plan review. Structural changes within the building should not be included.

Section 25.07.02 – Subsection b has been modified to break it down into subsections 1 and 2. Subsection 1 contains the existing language in the ordinance. In addition, the point calculation table has been modified to add a footnote 1 in the first column. In cases where there are no new dwelling units, no non-residential square footage, or no increase in peak-hour trips, no points will be assigned. New subsection 2 clarifies that in the case of modifications to an existing development, the impact point calculation is based on the scope of the modification, not the entire development.

Section 25.07.04 – Added a requirement to post a sign for a Level 1 Site Plan application.

Section 25.07.05:

Deleted unnecessary phrase at the end of subsection 4, *Notice*

Added a new subsection 5 clarifying the requirement for post-application area meeting.

Deleted reference to aesthetics in new subsection 7.

As a result of adding the new subsection 5, the final subsection becomes 10 instead of 9.

Section 25.07.06 – Typo in subsection 2. Added specific requirement for post-application area meeting. As a result of adding the new subsection 5, the final subsection becomes 13 instead of 12.

Section 25.07.08 :

Added new subsection 5 with specific requirement for post-application area meeting.

In subsection 15 (to become 16) relocated the phrase by resolution for clarification.

Subsection 21 becomes 22 as a result of inserting the new subsection 5.

Section 25.07.09:

Added clarifying phrase “...the provisions of...” in subsection c.

Added new subsection f with specific requirement for post-application area meeting.

Subsection m (to become n) – The provisions and requirements for implementation of special exceptions have been inserted here. The reference to Sec. 25.07.07 was deemed not acceptable since that section refers only to variances.

Subsection p (to become q) – Clarifies that Level 2 site plan review is required only where development or redevelopment is required, and corrected reference to level 2 site plan section.

Section 25.07.12 – Added a provision that requires an occupancy permit when there is a tenant change for a commercial, mixed-use or industrial use. This is consistent with the former ordinance and current procedures.

Section 25.07.14 – Clarifies that an approved Certificate of Approval must be filed before a building permit can be issued.

Section 25.08.02 – Revised language to clarify conditions under which an approved variance must be implemented.

Section 25.08.05 - Typos

Sections 25.08.06, .07, and .08 – The Legal department has recommended revising and re-ordering the language in these sections to clarify what constitutes a development standards nonconformity, and under what circumstances these nonconformities may be modified. References have been added to Article 14 to cover cases where projects may be covered by a Planned Development Zone. In addition, modifications to those portions of a development that do conform may be processed under the provisions of Sec. 25.05.07. Modifications to the nonconforming portions are subject the provisions of Sec. 25.08.08. Where the existing language refers to alterations, the language has been changed to read structural alterations. The opportunity to improve nonconforming buildings through means such as installing a new “skin” should be allowed, so long as the nonconformity is not increased. Finally, corrections and clarifications have been made to the notice and processing requirements in Section 25.08.08.c.

Section 25.09.03 – Modified provision in the development standards table clarifying that the 12 foot height is the maximum allowed at the minimum setback of 3 feet. Also clarified that the Maximum Rear Yard Coverage provision applies to accessory buildings, but not structures, consistent with past provisions. Added language in Sec. 25.09.03.2(a) clarifying that the 3 feet for each added foot of height above 12 feet applies to fractions

of a foot; i.e., if the height is 12 feet, 6 inches, then the an additional 18 inches of setback is required.

Section 25.09.07 – Language clarification.

Section 25.09.08 – Wireless Communication Facility – Typos in subsections b.5 and e.1(a).

Section 25.10.03 – Land Use Tables:

Corrected designation of Dwelling, semi-detached to be consistent with definition.

Corrected letter designations in the use category column.

Corrected site plan requirement to Level 2 for publicly-owned or publicly-operated uses.

Section 25.10.05 – Footnote 1 to the Development Standards table revised to define what are deemed impervious surfaces.

Section 25.11.06 – Typo in subsection 6.

Section 25.12.03 – Land Use Tables:

Corrected letter designations in the use category column.

Deleted “Business equipment sales and service” from the land use table, since the use is not permitted in either industrial zone.

Added clarification to the “Office” use to include medical and professional offices.

Inserted section f, Assembly and Entertainment uses.

Section 25.13.03 – Land Use Tables:

Under the “Dwelling, one unit semi-detached” use, the phrase “one unit” has been deleted to be consistent with the definition in Article 3

Typos in last column regarding multiple-unit dwellings and commercial parking facilities.

Revised Publicly-owned and publicly-operated uses to allow as a permitted use in MXNC and MXT zones. By convention, public uses are permitted in all zones as being consistent with the public good.



Corrected typo for letter designation in conditional requirements for commercial parking facilities.

Twinbrook Neighborhood Plan Zoning Recommendations – The recently adopted Twinbrook Neighborhood Plan contains a number of recommended modifications to the land use tables for the Mixed Use Neighborhood Commercial (MXNC) Zone. These recommendations are as follows:

Uses	Proposed Revisions
Consumable goods to be used in the home	Revise to show as permitted use
Durable goods to be used in the home	Revise to show as permitted use
Flowers, except from outdoor garden or greenhouse	Revise to show as permitted use
Wearing apparel and related accessories	Revise to show as permitted use
Archival Record Storage	Revise to show as conditional use if located in a basement
Medical or dental laboratory	Revise to show as conditional use if located in a basement
Automobile parts sales, no installation or service	Revise to show as permitted use
Duplicating Service	Revise to show as permitted use
Health and fitness establishment	Revise condition to permit with no size limitation if located in the basement
Sports facility, multi-purpose, indoor commercial	Revise to show as condition use permit if located in the basement
Recreational establishment, indoor, commercial, except shooting gallery range	Revise to show as conditional use if located in the basement
Rental hall for meetings and social occasions	Revise condition to permit with no size limitation if located in the basement
Theatre including dinner theatre	Revise to show as permitted use

These recommended modifications have been made within the land use tables for Article 13.

Section 25.13.04 – Corrected subsection identifiers.

Section 25.13.05 –

In subsection a, language has been added to make reference to the building restriction line provisions being added in Article 17.

In the final version of the adopted code, the wording within the Development Standards table shifted to the left so that some of the words were hidden behind the table. The table will be replaced with the one shown in the proposed text amendment. None of the regulations within the table have changed.

Under subsection c, “Other Standards and Requirements for New Development or Redevelopment,” a new subsection 6 has been added that limits the footprint of any one single retail tenant to 65,000 square feet of floor area. This reflects in part the intent of the former Zoning Ordinance to limit “big box” developments. Under the old ordinance, any one project was limited to a total of 65,000 square feet. Staff suggests that the limitation be on the footprint, so as to avoid large one-level building expanses devoted only to one retailer, but not limit the amount of total retail space, which can be provided on upper or lower floors.

Section 25.13.06 – Typo

Section 25.13.07 – The term “guidelines” is changed to standards in subsections a.3 and b.3, and typos corrected.

Section 25.14.01 – Added the phrase on the property to subsection d.1(d) for clarification; added section cross-reference to subsection 6.

Section 25.14.02 - Typos

Section 25.14.03 - Typo

Section 25.14.07 – Typo in subsection d.3(a); changed “project” to Planned Development in subsection d.4.(a); deleted the words “types of” in subsection e.1(c) as redundant.

Section 25.15.02. – Added specific cross-reference to the Home-Base Business provisions in Article 9. Added the word information in subsection 2(b); replaced the word “sells” with vacates in subsection 3(a), so that it is clear that the use terminates when the operator leaves the premises. Corrected typos.

Section 25.16.02 – Subsection a.1(c) has been modified to make cross-reference to Section 25.05.07.b.

Section 25.16.03.d. In the parking tables, insert parking standards for a life care facility. These standards are broken out for independent living in either free-standing detached units (single-unit, duplex, triplex or quadraplex) or multi-unit dwellings; assisted living units; and nursing care facilities. The parking standards are derived from similar types of uses in the code, such as multiple-unit dwellings, housing for senior adults, and nursing homes.

Section 25.16.03.g.1 - Added reference to subsection h.6 to make it clear that the option to use the shared use provisions is available under this provision.

Section 25.16.03.h.1 – Added the PD and MXE zones as those that may be allowed parking flexibility under this subsection. There are a number of PD Zones, including Town Square, Metro Center, and Twinbrook Station that would likely qualify for one or more of the provisions of this section. Given the range of use possibilities in the MXE Zone, some projects may also be eligible for parking flexibility.

Section 25.16.03.i.1(c) - Typo

Section 25.16.04.c – Deleted the word “area” from the language. In this context the word is confusing since the computation is for the number of spaces required.

Section 25.16.06.b.6 – Revised the language to make it clear that these provisions refer to surface parking facilities. Section 25.16.07, Parking Structure Design, refers back to this section, and the provisions for landscaping and number of spaces do not apply within a parking structure.

Section 25.17.02 – Subsection d has been modified to include emergency generators in the screening requirements.

Section 25.17.03 – Subsection b has been amended to exclude emergency generators for the requirements for placement underground. These are internal combustion units that must operate in open air.

Section 25.17.08 – This new section brings into the Zoning Ordinance provisions that currently are in Chapter 5 of the City Code, the Building Code. It is unclear why the provisions for building restriction lines were placed in Chapter 5, but the staff believes that they more properly belong in the Zoning Ordinance. The current language in Chapter 5 establishes building restriction lines along West Montgomery Avenue between North Adams Street and I-270, along Rockville Pike between the south city boundary and Dodge Street, and along Hungerford Driver/Frederick Road between North Washington Street and Gude Drive. In addition, this section includes restrictions on the placement of signs within these BRL's.

In reviewing the language from Chapter 5, staff recommends that the building restriction lines along West Montgomery Avenue be deleted. The provisions for established

building line requirements in Section 25.10.05.e.2 will control development along the street in the residential zones.

With regard to the building restriction lines along Rockville Pike, they reflect the BRL's that have been established by the 1989 Rockville Pike Master Plan. For this reason, staff recommends that these provisions be retained for the present. Once the comprehensive revisions to the Pike plan are adopted, these restrictions may be revised or deleted.

The building restriction lines along Hungerford Drive/Frederick Road are also recommended to be retained until such time as a master plan revision is done.

Under the Exceptions provisions, the language from Chapter 5 regarding setbacks near the Metro/CSX right-of-way are retained for narrow properties. Staff does recommend adding a new waiver provision allowing the Approving Authority some flexibility in administering the BRL's in cases where the waiver would be consistent with any master plan recommendations or with the purpose and intent of the applicable zone.

Finally, the provisions for signs within the BRL areas are also retained from Chapter 5. Staff has made some clarifying changes to the exhibits, but the intent of the original language has been retained.

Sec. 25.18.08 – References to Chief of Inspection Services changed to Chief of Planning, as noted earlier above.

Sec. 25.18.13 – In discussions with the enforcement staff, it the recommendation that the provisions for signs in the MXNC Zone be made consistent with the regulations for signs in the MXCD Zone. This reflects the current conditions, and also reflects the fact that the MXNC Zone has changed in character and intent as the Zoning Ordinance review process went forward. As a result, the recommendation is that references to signs in the MXNC Zone be deleted from Sec. 25.18.13.

Sec. 25.18.14. – Reference to the MXNC Zone is added in this section in place of 25.18.13, as noted above.

Section 25.18.14.b.2 – A new subsection (c) has been added to make reference to the special provisions for sign setbacks contained in Sec. 25.17.08.

Section 25.20.03 – Revised subsection 3 and subsection b to more clearly identify which types of developments are covered by these provisions.

Section 25.21.13 -

The Purpose provisions need to be modified to more clearly indicate the intent of this section. Clarifying language has been added.

The proposed text amendment incorrectly proposes to modify subsection 2. The change should be to subsection 4, which has been revised for better clarity.

### **ADDITIONAL CHANGES RECOMMENDED**

Subsequent to the filing of the text amendment, a few additional items have come to light that need to be addressed. These are as follows:

Sec. 25.16.06.d.1 – There needs to be an “or” added to this subsection, to read as follows:

d. *Paving Specifications*

All off-street parking and loading areas must be so drained as to prevent damage to abutting properties or public streets and must be paved with a minimum of:

1. A pervious paving material as approved by the Director of the Department of Public Works; or

\* \* \*

As part of the ongoing reorganization of duties and responsibilities, the regulation of temporary uses will be transferred from the Inspection Services Division to the Planning Division. As a consequence the responsibility for permitting and enforcement will be under the Chief of Planning. This requires that Section 25.09.04.b be modified as follows:

### **25.09.04 – Temporary Uses**

- a. *Permit Required* – A temporary use permit must be issued prior to the use of a building, other structure, or land allowed by temporary approval and demarked in the individual use charts of Articles 10 through 14. Temporary uses do not include uses that are regulated by Chapter 12, *Licenses, Permits, and Miscellaneous Business Regulations*, of this Code, such as hawkers and peddlers.
- b. *Issuance* – A temporary use permit may be issued if the [Chief of Inspection Services] Chief of Planning or designee finds that the use proposed in the application will not:

\* \* \*

The proposed text amendment modifies the provisions for application and notice for Administrative Adjustments in Section 24.06.05. This includes a provisions that notice is only required for the adjoining and confronting property owners. However, it should explicitly say that the applicant for the adjustment should provide the notice. Therefore, this provision should be further modified as follows (double underlining indicates added new text added; double brackets indicate new text to be deleted):

- c. *Application* – Applications for administrative adjustments must be submitted and processed in accordance with the provisions of [Article 5, including but not limited to amendments, notice of decisions and appeal of decisions] Section 25.05.02. The applicant is required to provide notice [[is required only]] to the adjoining and confronting property owners.

\* \* \*

The Historic Preservation staff recommends that Section 25.07.14 be amended to simplify the language. Their concern is that by including a list of actions, there may be some future argument that some activity not listed would not be subject to historic review. The deletion of the this list also means that the definition for “Alteration, Substantial Exterior” should be deleted. Therefore, the following modifications should be made:

### **25.03.02 – Words and Terms Defined**

\* \* \*

*[Alteration, Substantial Exterior – For purposes of this Chapter, an exterior alteration is deemed to be substantial if one or more of the following conditions results:*

1. The removal of more than 50% of the total exterior wall surfaces from the grade up; or
2. The removal of more than 50% of the roof area (as measured in vertical plan view); or
2. The removal of any wall facing a public street.]

\* \* \*

### **25.07.14 – Certificate of Approval in Historic Districts**

- a. *Requirement* – A Certificate of Approval issued by the Historic District Commission is required prior to any [of the following] actions affecting a site or the exterior of a building or structure in a Historic District Zone[:].

- [1. Construction;
2. Structural Alteration;
3. Substantial Exterior Alteration;
4. Relocation;

5. Demolition,
6. Reconstruction, or
7. Demolition by neglect.]

On page 49 of the proposed text amendment, there is an extraneous entry for Section 25.18.13. This is correctly shown on the bottom of page 50, so the entry on page 49 should be deleted.

The staff recommends that these additional modifications be included in the final draft version of the proposed text amendment

### **ADDITIONAL AMENDMENTS REQUESTS**

Interested parties have submitted or proposed some additional modifications for inclusion in the proposed text amendment as it goes forward for consideration by the Planning Commission and City Council. These additional requests are discussed below.

#### Ancillary Restaurant

A request has been made to create a new use category entitled “Ancillary Restaurant.” The intent is to allow a restaurant within an office building in a Planned Development Zone. The floor area of the restaurant would limited to either 8,000 gross square feet or no more than 5 percent of the gross square footage of the building, whichever is smaller. The office building must have at least 190,000 gross square feet of floor area. This use would be different than an “Accessory Restaurant,” which is a similar use, but does not allow exterior signs or a separate outside entrance. The ancillary restaurant would have a separate parking standard that assumes sharing of spaces with the office use in the evening hours.

As proposed by the letter of June 25, 2009 from Mr. Kominers, this new use would be limited to office buildings within PD zones. Several office buildings in Tower Oaks, King Farm and Fallsgrrove could qualify under this proposal.

This proposal falls within the spirit of the new zoning ordinance to encourage a mix of uses. In reviewing this proposal, the staff recommends that it be expanded to apply to other mixed-use zones that would allow major office development. Consequently, the staff recommends that this proposed additional amendment be modified as follows:

- Allow the ancillary restaurant in office buildings of 150,000 square feet or more. With a normal floor plate of 20,000 to 25,000 square feet, these buildings would be six or more stories tall.
- Do not limit the restaurant to the ground floor. There may be instances where a roof-top restaurant may be a desirable option.
- Allow this use in the MXTD, MXCD, and MXE zones, along with the PD zones.

- Maintain the parking standard of 1 per 300 gross square feet of restaurant use as proposed in the June 25 letter. The sharing of parking with the office use make sense since during the day most business will come from the office building, and during the evenings parking will be available after working hours.
- Add a provision in Article 14 for the Planned Development uses that will allow this use in planned office buildings without the need for an amendment to the development plan.

A draft of the proposed alternative text language is attached to this staff report.

#### Parking Standards for Life Care Facilities

The proposed text amendment would add a new parking standard for a Life Care Facility, a new use that was added at the time the new zoning ordinance was adopted. Representatives for the National Lutheran Home have suggested a change in the parking standard requirement for skilled care facilities within the Life Care Facility parking proposal. Under the previous zoning ordinance, the parking requirement for hospitals and nursing homes was one space for each 1,000 square feet of floor area, plus one space for each participating staff doctor, and one space for each two employees. This standard has been carried over into the new ordinance, and has also been proposed for the nursing and assisted living portion of a life care facility in the proposed text amendment. As of the date of this staff report, no formal proposal has been received. Supporting data is needed before the staff can provide a recommendation on this subject.

#### Banks in the I-L Zone

In a letter dated June 11, 2009 from Stephen Orens, a request is made to consider adding Bank or Financial Institution (including the provision allowing for a drive-through) as an allowable use in the I-L, Light Industrial Zone. Currently the code only allows offices (which may include banks) to occupy no more than 25 percent of the floor area of a building (meaning free-standing bank would not be permitted), and would not allow a drive-through. Banks are permitted in all of the mixed-use zones. In those zones banks with drive-throughs are allowed as a conditional use, the condition relating to how the drive-throughs are to be installed and managed.

There are a few banks in the industrial areas of the City, where they had previously been allowed by special exception in the I-1 Zone. At least one of these banks does have a drive-through. The bank that is the subject of the correspondence is in a shopping center that is partly within and partly outside the City boundary. Since this bank does not occupy more than 25 percent of the building floor area, it is a permitted office use. However, the area behind the building where the stacking lanes for the proposed drive-through would be located is in the County.

The staff believes that this request for a change in the land uses for the I-L Zone is a substantive policy change that is beyond the intended scope of this text amendment. The staff therefore recommends that this proposal not be included, but should rather be the



subject of a separate text amendment application where the overall policy issues regarding appropriate uses in the I-L Zone would be better addressed. Further, in the particular case of the subject bank, the entire site ought to be annexed into the City to avoid problems with joint jurisdiction over site plan review and enforcement.

#### Landscaping, Screening and Lighting Manual

The proposed text amendment recommends that Section 25.05.07.b.2(c) be modified to add a new sentence that reads: Landscaping maintenance does not require an amendment application under this section. Many projects in the City have landscaping that is decades old, and in need of upgrading or replacement. Associated with this text change, staff will propose an amendment to the Landscaping, Screening and Lighting Manual that would add the following language under the Maintenance provisions in Section 4 c:

As part of maintenance, the species of landscaping materials may be changed, so long as the resulting materials will meet the design and intent of the original approved landscaping plan. Where such changes are proposed, a revised landscaping plan must be approved by the Chief of Planning and maintained in the file with the original project approval.

This change will allow the Chief of Planning to review and approve landscaping revisions that meet the intent of the original approval, without having to go through a full amendment process. Since the Manual was adopted by resolution, the Mayor and Council can amend it in the same manner.

#### **RECOMMENDATION**

Staff finds that the proposed text amendment, with the additional modifications recommended in this staff report, will provide the necessary additions, clarifications and corrections to meet the intent of the comprehensive revisions to the Zoning Ordinance, and therefore recommends approval of text amendment TXT2009-00221.

/dem

Attachments: Text Amendment Application  
 Letter of June 11, 2009 from Steve Orens  
 Letter of June 25, 2009 from William Kominers  
 Draft Text Amendment for Ancillary Restaurants